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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

EUGENE GENCHEV, Plaintiff, vs. DETROIT DIESEL CORPORATION; and Does 10, inclusive, Defendant.	Case No. 08-CV-1021 W (NLS) **PROOF OF SERVICE OF CHAMBER RULES OF THE HONORABLE THOMAS J. WHELEN** (Complaint filed: 4/18/08)

Chamber Rules

The Honorable Thomas J. Whelan

United States District Court, Southern District of California

These rules will help civil litigants appearing before Judge Whelan. They answer many commonly-received questions and explain procedures that are specific to Judge Whelan's chambers. In most cases, these rules are designed to help litigants clarify the issues and limit the scope of disputes before seeking the Court's assistance. The latest copy of these rules is available on the court's web site (http://www.casd.uscourts.gov).

Counsel for plaintiff, or plaintiff, if appearing on his or her own behalf, is responsible for promptly serving notice of the requirements contained herein upon defendant or defendant's counsel. If the action came to the Court via noticed removal, this burden falls on the removing defendant.

Local Rules

Except as otherwise provided herein or as specifically order by the Court, all parties are expected to strictly comply with this District's Local Rules.

Discovery

Pursuant to Civil Local Rules 26.1(e) and 72.1(b), discovery matters are handled by the assigned Magistrate Judge. All documents relating to discovery shall contain the words "**DISCOVERY MATTER**" in their caption to ensure proper routing. Hearings for discovery motions shall be scheduled by the assigned Magistrate Judge's law clerks.

Motions

Hearing Dates

Counsel shall obtain all hearing dates from the Court's law clerks before filing moving papers. Any hearing dates for motions to be heard before Judge Whelan scheduled by the Magistrate Judge assigned to the case shall be cleared with Judge Whelan's law clerks before the parties file their moving papers.

Oral Argument

The Court generally decides motions based on the papers submitted by the parties. In the caption of its notice of motion and motion, the moving party shall include the following: **NO ORAL ARGUMENT PURSUANT TO LOCAL RULE**. If the Court decides that oral argument will assist it in deciding a given motion, counsel will be notified telephonically three court days before the scheduled hearing date.

Points and Authorities

In their memoranda of points and authorities, the parties shall state all legal and factual bases for their respective positions. Moving parties shall raise all factual and legal bases for the motion in the opening brief. Factual matters or legal arguments raised by a party for the first time in their reply brief, unless directly in response to the opposition, may not be considered.

Statement of Non-Opposition, Failure to Oppose

A party that determines that it will not oppose a given motion shall file a statement of non-opposition no later than 14 days before the hearing date. An opposing party's failure to file a memorandum of points and authorities in opposition to any motion will be construed as consent to the granting of the motion.

Reconsideration Motions

Motions for reconsideration are disfavored unless a party shows that there is new evidence, a change in controlling law, or establishes that the Court committed clear error in its earlier ruling. **No motion for reconsideration shall be filed without leave of the court.** No later than the time provided in Civil Local Rule 7.1(I)(2), the party seeking to move for reconsideration shall file an ex parte application for leave to file a motion to reconsider. The ex parte application shall be accompanied by a declaration as required by Civil Local Rule 7.1(I)(1). The application shall contain a brief summary of the argument the party intends to present in an motion for reconsideration, and shall not exceed **four pages in length**. Upon review of the application, the court will either issue an order granting leave to file a motion for reconsideration, including a briefing schedule, or an order denying leave. Ex parte applications made under this section shall be exempt from these rule's and the Local Rule's notice requirements.

Motions to Amend the Pleadings

Before filing any motions to amend the pleadings, counsel are required to meet and confer in good faith regarding the proposed amendment. To facilitate this process, the party seeking to amend their pleading shall provide opposing counsel with a copy of the proposed amended pleading along with an explanation of the reasons for the amendment. If counsel are unable to reach agreement regarding the proposed amendment, counsel filing the motion to amend shall attach a declaration to the motion to amend documenting counsels' meet and confer efforts.

All requests to amend the pleadings are handled by the Magistrate Judge assigned to the case. Please call the Magistrate Judge's law clerks to obtain a hearing date and submit all papers to the Magistrate Judge.

Temporary Restraining Orders

All motions for temporary restraining orders shall be briefed. While temporary restraining orders may be heard ex parte, the Court will do so only in extraordinary circumstances. The Court's strong preference is for the opposing party to be served and afforded a reasonable opportunity to file an opposition. In appropriate cases, the Court may issue a limited restraining order to preserve evidence pending further briefing. The Court will generally give notice of hearing by telephone.

Administrative Requests, Ex Parte Applications

Before filing any ex parte application, counsel shall make every attempt to contact the opposing party to meet and confer regarding the subject of the ex parte application. All ex parte applications shall be accompanied by a declaration from counsel documenting (1) efforts to contact opposing counsel, (2) counsel's meet and confer efforts and (3) opposing counsel's position regarding the ex parte application. Any ex parte application filed with the Court shall be served on the opposing counsel via facsimile, electronic mail with return receipt requested or overnight mail. Ex parte applications that are not opposed within two Court days will be considered unopposed and may be granted on that ground.

Continuances

Parties requesting a continuance of any conference, hearing, deadline, briefing schedule, or other procedural changes, shall meet and confer prior to contacting the Court. If the parties reach an agreement, they shall submit a stipulation and proposed order with a detailed declaration of the reason for the requested continuance or extension of time. Except in extraordinary circumstances, stipulations to amend a briefing schedule or a motion hearing date must be filed no later than three court days before the affected date. If the parties are unable to reach an agreement, the party requesting the continuance shall file an ex parte application satisfying the applicable legal standard, with a particular focus on the diligence of the party seeking delay and any prejudice that may result therefrom. In addition, the ex parte application shall state (1) the original date, (2) the number of previous continuance requests and (3) whether previous requests were granted or denied.

Format for Proposed Orders and Stipulations

Notice that order is "Proposed"

Please place the word "proposed" in brackets (e.g. "[PROPOSED] ORDER GRANTING EX PARTE APPLICATION TO..." "STIPULATION EXTENDING THE TIME IN WHICH TO FILE A RESPONSIVE PLEADING AND [PROPOSED] ORDER THEREON").

Extraneous Information Omitted

Remove any attorney or firm information from the headers, footers, or margins of the document. This includes attorney captions at the top left of the page, any firm logos in the left margin, document names in the bottom margin, etc.

Motions in Limine

Before filing any motions *in limine*, parties are required to meet and confer in an attempt to resolve their dispute. If the parties are unable to resolve their differences, counsel filing the motion in limine shall attach a declaration documenting the parties meet and confer efforts and the reason for their failure. Parties are encouraged to be selective with their motions in limine and not to file mundane or unnecessary motions.

Motions in Limine must be filed and served no later than **four weeks** before trial and any opposition must be filed no later than **two weeks** before trial. Reply papers should not be filed.

Jury Instructions

The parties are required to meet and discuss proposed jury instructions. If the parties are unable to reach an agreement, they may submit those instructions upon which they cannot agree to the Court.

Communication with the Court

Consistent with Local Rule 83.9, counsel and parties shall refrain from writing letters or placing telephone calls to the Court or sending the Court copies of letters addressed to others, or otherwise causing or encouraging ex parte communications with the Court. Any party or attorney who causes or encourages such unauthorized ex parte communications or provides the Court's contact information with the knowledge that it shall be used for unauthorized ex parte communications, may be sanctioned. **Absent extraordinary circumstances, counsel shall personally initiate any authorized communications with the Court or chambers staff, rather than rely on a representative (e.g., a secretary or paralegal).**

Pre-Trial Conferences/Letter Briefs

In addition to submitting the Proposed Pretrial Order as required by the Civil Local Rules, the parties are further to separately submit informal letter briefs, not exceeding two single spaced pages, served on opposing counsel and received in Judge Whelan's chambers (and not filed in the Clerk's Office) no later than the **Wednesday before the pretrial conference at 2:30 p.m.**

The letter brief should be a relatively informal and straight forward document. The letter brief should outline a short, concise and objective factual summary of the party's case in chief, the number of hours/days each party intends to expend at trial, the approximate number of witnesses, whether certain witnesses will be coming in from out of town, the number of testifying expert witnesses, whether any unique demonstrative exhibits may be presented, the number of proposed motions in limine that may be filed, precisely when the parties would be prepared to submit their in limine papers (and whether the parties have met and conferred with respect to the in limine issues), the issue of proposed jury instructions and when the parties intend to submit them before trial, any voir dire issues, either party's preference as to what date(s) the trial should begin and any other pertinent information that either party may deem useful to assist the Court in the execution of the Pretrial Conference and in setting the matter for trial.

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 444 South Flower Street, Suite 1100, Los Angeles, California 90071.

On June 13, 2008, I served the within document(s) described as:

CHAMBER RULES OF THE HONORABLE THOMAS J. WHELEN

on the interested parties in this action as stated on the attached mailing list.

[X] (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth on the attached mailing list. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[ ] (BY FAX) By transmitting a true copy of the foregoing document(s) via facsimile transmission from this Firm's sending facsimile machine, whose telephone number is (213) 533-5444, to each interested party at the facsimile machine telephone number(s) set forth on the attached mailing list. Said transmission(s) were completed on the aforesaid date at the time stated on the transmission record issued by this Firm's sending facsimile machine. Each such transmission was reported as complete and without error and a transmission report was properly issued by this Firm's sending facsimile machine for each interested party served. A true copy of each transmission report is attached to the office copy of this proof of service and will be provided upon request.

I certify that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on June 13, 2008, at Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.

Liv Kirchoff	/s/ Liv Kirchoff
(Type or print name)	(Signature)

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